

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN DIRK WASSNER,

Plaintiff,

v.

No. 13-cv-0954 MCA/SMV

**CHRISTUS ST. VINCENT REGIONAL
MEDICAL CENTER, ALEX VALDEZ,
KEVIN GARRETT, BRENDA STEWART,
PEARL MOHNKERN, and DOES 1–99,**

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion to Permit Filing of Amended Complaint [Doc. 27], submitted on December 20, 2013, and on Defendants' Motion for Partial Dismissal Pursuant to Rule 12(b)(6) and for a More Definite Statement Pursuant to Rule 12(e) [Doc. 28], submitted on December 23, 2013. Neither side has responded to the other's motion, but no responses are needed. Because Plaintiff is entitled to amend his Complaint as a matter of course under Fed. R. Civ. P. 15(a)(1), Plaintiff's motion will be denied as moot. Because Plaintiff intends to amend his Complaint, Defendants' motion will be denied without prejudice.

Plaintiff filed his original Complaint in state court on August 2, 2013, and Defendants removed the case to this Court on October 2, 2013. [Doc. 1]. Although Defendants had not filed any responsive pleading, a Rule 16 Scheduling Conference was held on December 6, 2013, by the previous referral judge,¹ and discovery deadlines were set. [Docs. 23, 24]. On December 20,

¹ The undersigned was assigned to this case on December 17, 2013. [Doc. 25].

2013, Plaintiff moved for leave to amend his complaint, [Doc. 27], and on December 23, 2013, Defendants filed their Motion for Partial Dismissal and for a More Definite Statement [Doc. 28].

Rule 15 of the Federal Rules of Civil Procedure governs amendments to pleadings.

Rule 15 states in pertinent part:

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

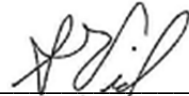
Fed. R. Civ. P. 15(a)(1).

Under Rule 15(a)(1), Plaintiff has 21 days from December 23, 2013—when Defendants filed their motion under Rules 12(b) and 12(e)—to amend his complaint as a matter of course. Thus, Plaintiff does not require leave from the Court, nor does he require consent from the Defendants, to amend his complaint on or before January 13, 2014, and his motion [Doc. 27] should be denied as moot. Because Plaintiff intends to amend his Complaint, Defendants' Motion for Partial Dismissal and for a More Definite Statement [Doc. 28] should be denied without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Permit Filing of Amended Complaint [Doc. 27] is **DENIED as moot**.

IT IS FURTHER ORDERED that Defendants' Motion for Partial Dismissal Pursuant to Rule 12(b)(6) and for a More Definite Statement Pursuant to Rule 12(e) [Doc. 28] is **DENIED** **without prejudice** at this time.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge